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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

APR 14 1992

Federal Communications Commission
Office of the Secretary

In re Application of)
)
WILBURN INDUSTRIES, INC.)
)
Application for Construction)
Permit for a new FM station,)
Channel 280A, Westerville, Ohio)

File No. BPH-911230MC

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FM EXAMINERS

To: Chief, Mass Media Bureau

**SUPPLEMENT TO OPPOSITION TO
PETITION TO DENY AND DISMISS**

Wilburn Industries, Inc. ("Wilburn"), by its attorneys,
hereby submits its Supplement to the "Opposition to Petition to
Deny and Dismiss" which it filed with regard to the above-
captioned matter on April 9, 1992. In support thereof, the
following is stated:¹

Wilburn has applied to construct a station on the frequency
(Channel 280A) and at the site formerly utilized by Station WBBY-
FM, Westerville, Ohio. Wilburn's application noted that such
site was short-spaced to that of Station WTTF-FM, Tiffin, Ohio,
but also pointed out that Wilburn's technical proposal complied

¹ As discussed infra, the instant Supplement references a
ruling of the Mass Media Bureau which was released on April 13,
1992; i.e., after Wilburn's Opposition was filed with the Bureau.
The instant pleading is being filed one day after the release of
the Bureau ruling. It is submitted that good cause thus exists for
the acceptance of Wilburn's Supplement at this time, in that the
information herein is relevant and material to the Bureau's
consideration of the matter, it will assist and not delay the
resolution of such matter, and no party will be unfairly
prejudiced. Acceptance of the instant Supplement therefore is
respectfully requested.

with Section 73.213 of the Rules with regard to such short-spacing. On March 26, 1992, Ohio Radio Associates, Inc. ("ORA") petitioned to deny or dismiss Wilburn's application on the grounds that, whereas WBBY-FM could have relied on Section 73.213 because it was a "grandfathered" station, an applicant for a new station on the allotted channel may not rely on such Section. According to ORA, Section 73.213 applies exclusively to existing stations and not to allotments.

In its Opposition, Wilburn argued that a channel allotment, not merely an existing station operating on that channel, may be "grandfathered" and, therefore, that a new applicant for the channel also could rely on Section 73.213. Wilburn pointed out in this regard that the location of WBBY-FM had defined the reference coordinates of Channel 280A and that its application specified those reference coordinates.

The Mass Media Bureau has just released a Hearing Designation Order, DA 92-358, released April 13, 1992, which has now confirmed the accuracy of Wilburn's argument. Specifically, the Bureau stated that Section 73.213 of the Rules "explicitly" provides that:

If the reference coordinates of an allotment are short-spaced to an authorized facility or another allotment (as a result of the revision of Section 73.207 in the Second Report and Order in MM Docket No. 88-372), an application for the allotment may be authorized, and subsequently modified after grant, in accordance with paragraph (c)(1) or (c)(2) of this Section...with respect to such spacing.

HDO, Para. 5. Further, the Bureau later discussed such policy as one "regarding 'grandfathered' stations or allotments." HDO, Para. 6.

In short, there now can be no doubt that Wilburn's application fully complies with the Commission's spacing regulations. ORA's Petition to Deny or Dismiss must itself therefore be denied.

Respectfully submitted,
WILBURN INDUSTRIES, INC.

By: 
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April 14, 1992
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Its Attorneys

CERTIFICATE OF SERVICE

I, Andrea Sumner, a secretary at the law firm of Brown Finn & Nietert, Chartered, do hereby certify that I have, this 14th day of April, 1992, mailed, via first-class U.S. Mail, postage prepaid, a copy of the foregoing "SUPPLEMENT TO OPPOSITION TO PETITION TO DENY OR DISMISS" to the following:

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